

Update: Contempt of Court Benchbook (Revised Edition)

CHAPTER 4

Sanctions for Contempt of Court

4.4 Statutory Exceptions to the General Penalty Provisions of the Revised Judicature Act

C. Failure to Pay Child or Spousal Support

Effective June 1, 2003, 2002 PA 567 amended MCL 552.633 and 552.635. On page 39 replace the language in Section 4.4(C) with the following language:

Several sections of the Support and Parenting Time Enforcement Act, MCL 552.601 et seq., govern support arrearages and associated sanctions. MCL 552.633(1) provides the court may find a payer in contempt if the court finds the payer in arrears and the court is satisfied that the payer has the “capacity to pay out of currently available resources” all or some portion of the amount due under the order. If the payer does not show the court otherwise, the court must presume that the payer has currently available resources equal to four weeks of payments under the order. The court must not find that the payer has currently available resources of more than four weeks of payments without proof from the Friend of the Court or the recipient of the support. MCL 552.633(1). If the court finds a payer in contempt of court pursuant to MCL 552.633(1), the court may enter an order doing one or more of the following:

“(a) Committing the payer to the county jail.

“(b) Committing the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to go to and return from his or her place of employment.

“(c) Committing the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.

“(d) If the payer holds an occupational license, driver’s license, or recreational or sporting license, conditioning a suspension of the payer’s license, or any combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for 2 months under the payer’s support order.

“(e) Ordering the payer to participate in a work activity. This subdivision does not alter the court’s authority to include provisions in an order issued under this section concerning a payer’s employment or his or her seeking of employment as that authority exists on August 10, 1998.

“(f) If available within the court’s jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.”

MCL 552.635(1) provides that the court may find a payer in contempt if the court finds all of the following:

- the payer is in arrears,
- the court is satisfied that by the “exercise of diligence” the payer could have the capacity to pay all or some portion of the support order, and
- the payer fails or refuses to pay the support order.

If the court finds the payer in contempt pursuant to MCL 552.635(1), then pursuant to MCL 552.635(2)(a)–(d), the court may immediately enter an order doing one or more of the following:

“(a) Committing the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to go to and return from his or her place of employment or, if the person wishes to seek employment, to seek employment.

“(b) If the payer holds an occupational license, driver’s license, or recreational or sporting license, conditioning a suspension of the payer’s license, or any combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments

in an amount greater than the amount of periodic support payments payable for 2 months under the payer's support order.

“(c) Ordering the payer to participate in a work activity. This subdivision does not alter the court's authority to include provisions in an order issued under this section concerning a payer's employment or his or her seeking of employment as that authority exists on August 10, 1998.

“(d) If available within the court's jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.”

An order of commitment under MCL 552.633 or 552.635 must be entered only if other remedies appear unlikely to correct the payer's failure or refusal to pay support. MCL 552.637(1).

The order of commitment must continue until the amount ordered to be paid is paid, but must not exceed 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt. MCL 552.637(4).

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Common Forms of Contempt of Court

5.9 Failure to Pay Child or Spousal Support

A. Statutes

Effective June 1, 2003, 2002 PA 567 amended MCL 552.631. On page 55 replace the language in Section 5.9(A) starting with the paragraph that begins “The Support and Parenting Time Enforcement Act. . .” with the following language:

The Support and Parenting Time Enforcement Act, MCL 552.601 et seq.,* also provides for the use of contempt powers to enforce child or spousal support orders:

“(1) If a person is ordered to pay support under a support order and fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful,* a recipient of support or the office of the friend of the court may commence a civil contempt proceeding by filing in the circuit court a petition for an order to show cause why the delinquent payer should not be held in contempt. If the payer fails to appear in response to an order to show cause, the court shall do 1 or more of the following:

“(a) Find the payer in contempt for failure to appear.

“(b) Find the payer in contempt for the reasons stated in the motion for the show cause hearing.

“(c) Apply an enforcement remedy authorized under this act or the friend of the court act for the nonpayment of support.

“(d) Issue a bench warrant for the payer’s arrest requiring that the payer be brought before the court without unnecessary delay for further proceedings in connection with the show cause or contempt proceedings.

“(e) Adjourn the hearing.

“(f) Dismiss the order to show cause if the court determines that the payer is not in contempt.” MCL 552.631(1)(a)–(f).

The Support and Parenting Time Enforcement Act defines “support” to include all of the following:

*MCR 3.208 governs procedure under this Act.

*Under MCL 552.613, the court may find an “income source” guilty of contempt for violating an order of income withholding.

“(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care,* child care expenses, and educational expenses.

*See MCL 552.626, on contempt sanctions for failure to maintain health care coverage.

“(ii) The payment of money ordered by the circuit court under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses.*

*Under MCL 722.719(3), the court may use its contempt powers to enforce such orders.

“(iii) A surcharge accumulated under section 3a.” MCL 552.602(ee)(i)–(iii).

Note: The property settlement provisions of a divorce judgment may not be enforced using the contempt power. See Section 5.8(B), on page 53.

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5.9 Failure to Pay Child or Spousal Support

C. Ability to Pay Support Arrearage and Sanctions

Effective June 1, 2003, 2002 PA 567 amended MCL 552.633 and 552.635. On page 57 replace the second and third full paragraphs, beginning with “MCL 552.633 . . .” with the following language:

MCL 552.633(1) provides the court may find a payer in contempt if the court finds the payer in arrears and the court is satisfied that the payer has the “capacity to pay out of currently available resources” all or some portion of the amount due under the order. If the payer does not show the court otherwise, the court must presume that the payer has currently available resources equal to four weeks of payments under the order. The court must not find that the payer has currently available resources of more than four weeks of payments without proof from the Friend of the Court or the recipient of the support. MCL 552.663(1). If the court finds a payer in contempt of court pursuant to MCL 552.633(1), the court may enter an order doing one or more of the following:

“(a) Committing the payer to the county jail.

“(b) Committing the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to go to and return from his or her place of employment.

“(c) Committing the payer to a penal or correctional facility in this state that is not operated by the state department of corrections.

“(d) If the payer holds an occupational license, driver’s license, or recreational or sporting license, conditioning a suspension of the payer’s license, or any combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for 2 months under the payer’s support order.

“(e) Ordering the payer to participate in a work activity. This subdivision does not alter the court’s authority to include provisions in an order issued under this section concerning a

payer's employment or his or her seeking of employment as that authority exists on August 10, 1998.

“(f) If available within the court’s jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.”

MCL 552.635(1) provides that the court may find a payer in contempt if the court finds all of the following:

- the payer is in arrears,
- the court is satisfied that by the “exercise of diligence” the payer could have the capacity to pay all or some portion of the support order, and
- the payer fails or refuses to pay the support order.

If the court finds the payer in contempt pursuant to MCL 552.635(1), then pursuant to MCL 552.635(2)(a)—(d), the court may immediately enter an order doing one or more of the following:

“(a) Committing the payer to the county jail with the privilege of leaving the jail during the hours the court determines, and under the supervision the court considers, necessary for the purpose of allowing the payer to go to and return from his or her place of employment or, if the person wishes to seek employment, to seek employment.

“(b) If the payer holds an occupational license, driver’s license, or recreational or sporting license, conditioning a suspension of the payer’s license, or any combination of the licenses, upon noncompliance with an order for payment of the arrearage in 1 or more scheduled installments of a sum certain. A court shall not order the sanction authorized by this subdivision unless the court finds that the payer has accrued an arrearage of support payments in an amount greater than the amount of periodic support payments payable for 2 months under the payer’s support order.

“(c) Ordering the payer to participate in a work activity. This subdivision does not alter the court’s authority to include provisions in an order issued under this section concerning a payer’s employment or his or her seeking of employment as that authority exists on August 10, 1998.

“(d) If available within the court’s jurisdiction, order the payer to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.”

The order of commitment must continue until the amount ordered to be paid is paid, but must not exceed 45 days for the first adjudication of contempt or 90 days for a subsequent adjudication of contempt. MCL 552.637(4).

Note: The amendments to MCL 552.633 and 552.635, provided above, do not alter the existing law with regards to MCL 552.633(1)(d) (license suspension) and MCL 552.635(2)(c) (work activity) as provided in the remaining text on the bottom of page 57.

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5.22 Contempt of Court Under the Juvenile Code

A. Statutes and Court Rule

Effective May 1, 2003, the court rules governing juvenile proceedings were extensively amended. On page 74, replace the first paragraph and the quoted material beneath it with the following:

MCR 3.928 also provides a description of the applicable procedures and penalties for contempt of court:

“(A) The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26. A parent, guardian, or legal custodian of a juvenile who is within the court’s jurisdiction and who fails to attend a hearing as required is subject to the contempt power as provided in MCL 712A.6a.

“(B) Contempt of court proceedings are governed by MCL 600.1711, 600.1715, and MCR 3.606. MCR 3.982–3.989 governs proceedings against a minor for contempt of a minor personal protection order.

“(C) A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 30 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separate and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.”

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5.22 Contempt of Court Under the Juvenile Code

C. Enforcement of Personal Protection Orders (PPOs) Against Juveniles

Replace the two paragraphs at the top of page 75 with the following paragraph:

The Family Division of Circuit Court has jurisdiction over proceedings involving a personal protection order issued under MCL 600.2950 and 600.2950a, in which the respondent is a juvenile less than 18 years of age. MCL 712A.2(h). Court rules governing procedure for juvenile violations of personal protection orders are found in MCR 3.982–3.989. Violations of personal protection orders may be punished by contempt sanctions.